IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7877 of 2005
WITH
SPECIAL CIVIL APPLICATION No.13388 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATWARLAL BHAGWANJI BHATT - Petitioner(s)

Versus

SUPERINTENDENT-GOVT.HOSPITAL - Respondent(s)

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Appearance :
MR SHIRISH JOSHI for Petitioner No(s).: 1.

MR H.D.DAVE, LEARNED AGP Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 04/08/2005

COMMON ORAL JUDGMENT

1.The Special Civil Application No.7877 of 2005 is filed by the petitioner workman (hereinafter referred to as the workman) challenging the judgment and award passed

by the Labour Court, Rajkot dated 1.12.2004 passed in Reference (LCR) No.401/1992 in so far as not granting any backwages from the date of termination till the reinstatement while partly allowing the said reference.

2.The Special Civil Application No.13388 of 2005 is filed by the State of Gujarat, employer challenging the aforesaid judgment and award dated 1.12.2004 passed by the Labour Court, Rajkot passed in Reference (LCR) No.401/92 in partly allowing the said Reference directing the petitioner to reinstate the respondent workman therein by quashing and setting aside the action of the petitioner in relieving the respondent workman and declaring the same as illegal.

3.It appears from the record that the workman was appointed in the Government Hospital, Morbi on probation vide order dated 9.4.1990. It is the case of workman that the initial period of probation was of 6 months and he was relieved on 13.11.1990 on completion of 6 months probation period as his work was found to be not satisfactory. However, thereafter, as the workman gave in writing that he will improve he was again taken back on duty on 1.1.1991, however, thereafter, his services came to be terminated on

28.2.1991, which was punitive in nature. As the termination of the workman was without following any due procedure as required under Section 25-F of the I.D.Act, the workman raised an industrial dispute being Reference (LCR) No.401/92. The said Reference was opposed by the State of Gujarat/employer and even in reply to the notice, written statement was filed in which it was stated that as the workman was on probation and his work was found to be not satisfactory and he was taken back on duty only for 1 month on temporary basis and still his work was found to be not satisfactory, his probation period is not extended and as a probationer he has no right to continue, more particularly, when his work is found to be not satisfactory. It was also submitted that he has also not completed 240 days in the last preceeding year. The Labour Court, Rajkot by judgment and award dated 1.12.2004 partly allowed the said Reference by holding that the workman is relieved and/or terminated on the ground of alleged misconduct which is punitive in nature; for the alleged misconduct no memo had been given; after the completion of the probation period, his probation period has not been extended by which breach of Section 25-F of the I.D.Act is committed and therefore, directed the State of Gujarat/ employer to

reinstate him however, without backwages. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Rajkot passed in Reference (LCR) No.401/92, the present Special Civil Applications have been filed by the workman as well as State of Gujarat/employer.

4.Shri Hasit Dave, learned AGP, has relied upon the following judgments of the Hon'ble Supreme Court in support of his submission that as the workman was a probationer and when his work was not found to be satisfactory, even if, there is some allegation with regard to some misconduct, it is not necessary to hold the inquiry. He has relied upon the following judgments.

(I). State of Punjab V/s. Balbir Singh reported in (2004) 11 SCC P.743.

(II). State of Pubjab V/s. Sukhbinder Singh reported in 2005 A.I.R. SCW P.3477

(III). Municipal Committee, Sirsa V/s. Manshiram reported in J.T. 2005(2) S.C. P.117

He has submitted that the Labour Court has not considered the Written Statement submitted on behalf of the employer- State of Gujarat in which, it was the specific case of the State of Gujarat that as the work of the workman was not found to be satisfactory, he was not

called for duty and/or offered the work and/or he is relieved, and as if the workman is a permanent employee, the order and/or action of the State Government/employeer is termed as punitive in nature and also alleging that no departmental inquiry is initiated, the Labour Court has passed the impugned judgment and award directing the State of Gujarat to reinstate the workman, which is contrary to law laid down by the Hon'ble Supreme Court in the aforesaid decisions.

5. Shri Shirish Joshi, learned advocate, appearing on behalf of the workman after considering the aforesaid decisions of the Hon'ble Supreme Court and the judgment and award passed by the Labour Court impugned in the present Special Civil Application has fairly conceded that the contention on behalf of the management with regard to relieving the workman on the ground of unsatisfactory work during the probation period appears to have been not considered by the Labour Court nor has considered the Written Statement and the defences, which is reflected in the written statement and therefore, it is submitted that let the matter be remanded to the Labour Court for its fresh decision, taking into consideration the case on behalf of the

State of Gujarat with regard to unsatisfactory work of workman with a direction to the Labour Court to take an appropriate decision considering the aforesaid decisions of the Hon'ble Supreme Court.

6. It is not in dispute that the workman was a probationer who was on probation initially for a period of 6 months. However, there is no further order passed by the authority making him permanent on completion of probation period and/or his probation period is also not extended and the workman continues to be on probation. It is the case of State of Gujarat/employer that as his work was not found to be satisfactory on completion of probation, it was extended (temporary) for a period of 1 month. The workman was relieved thereafter and it was the specific case on behalf of the State of Gujarat in the Written Statement the said aspect has not been considered by the Labour Court. As held by the Hon'ble Supreme Court in the aforsaid decision in case of ***(I). State of Punjab V/s. Balbir Singh reported in (2004) 11 SCC P.743, (II). State of Pubjab V/s. Sukhbinder Singh reported in 2005 A.I.R. SCW P.3477 & (III). Municipal Committee, Sirsa V/s. Manshiram reported in J.T. 2005(2) S.C. P.117*** (supra),

even if, during the probation period the probationer's work is not satisfactory and if some misconduct is found to have been committed, in that case also the Departmental Inquiry is not required to be held. The aforesaid aspect has not been considered by the Labour Court. Under the facts and circumstances, and on the basis of concession given by the learned advocate appearing on behalf of the respondent workman i.e. Shri Sirish Joshi, the learned advocate, appearing on behalf of the workman to remand the matter to the Labour Court for its fresh decision, the judgment and award passed by the Labour Court is required to be quashed and set aside and the matter is to be remanded to the Labour Court for its fresh decision in accordance with law and on merits, and in the light of the aforesaid aspects, mentioned in the written statement and in the light of the judgments of the Hon'ble Supreme Court, which are referred to hereinabove.

7. For the reasons stated above, the Special Civil Application No.13388 of 2005 partly succeeds. The judgment and award passed by the Labour Court, Rajkot, dated 1.12.2004 passed in Reference (LCR) No.401/92 is hereby quashed and set aside and the matter is remanded to the Labour Court, Rajkot for its fresh decision in the

light of the observations made hereinabove and the written statement, with a direction to the Labour Court to consider the case of the State of Gujarat with regard to the work of the respondent workman being unsatisfactory after perusing the judgments of the Hon'ble Supreme Court, which are referred to hereinabove. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

8. In view of quashing and setting aside of the judgment and award passed by the Labour Court, Rajkot dated 1.12.2004 passed in Reference (LCR) No.401/92 in Special Civil Application No.13388/2005, the Special Civil Application No.7877/2005 filed by the workman for getting backwages, etc., will not survive and the same is required to be dismissed and accordingly the Special Civil Application No.7877/2005 is dismissed.

(M.R.SHAH, J.)

kdc.